

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:13-cr-10164-WGY-ALL

4
5
6 UNITED STATES OF AMERICA

7 vs.

8
9 MICHAEL BOURQUE, et al

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12 *****

13
14 For Hearing Before:
15 Judge William G. Young

16 Motion to Suppress

17
18 United States District Court
19 District of Massachusetts (Boston)
20 One Courthouse Way
21 Boston, Massachusetts 02210
22 Friday, February 14, 2014

23 *****

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25 Official Court Reporter
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1 P R O C E E D I N G S

2 (Begins, 10:00 a.m.)

3 THE COURT: Good morning, counsel.

4 MR. YOON: Good morning, your Honor.

5 THE COURT: Let's call the case.

6 THE CLERK: Now hearing Criminal Matter
7 13-10164, the United States of America versus Bourque,
8 et al.

9 THE COURT: And just so we may have a complete
10 record, can I ask you again to introduce yourselves,
11 we'll start with the government.

12 MR. YOON: Yes, your Honor. Michael Yoon for
13 the government.

14 MS. FELDMAN-RUMPLER: Good morning, your
15 Honor, Leslie Feldman-Rumpler for Michael Roy.

16 MR. APFEL: Good morning, your Honor, David
17 Apfel, and with me is Robin Schwartz from my office, and
18 Mark Newton is also present in court.

19 THE COURT: Okay.

20 MR. BARRON: Good morning, your Honor. Kevin
21 Barron for David Akasa, who sits to my right.

22 THE COURT: Thank you.

23 MR. PALMER: John F. Palmer for Brian
24 Chisholm, um, waiving his presence, your Honor.

25 MR. PARKER: Peter Parker for Frank McGuire.

1 Good morning, your Honor.

2 MR. KORMAN: Good morning, your Honor.

3 William Korman on behalf of Thomas Ehwa, who actually is
4 here, he just stepped out in the hall. I'm sure he'll
5 be right back.

6 THE COURT: Thank you.

7 MR. McBRIDE: Good morning, your Honor. Devin
8 McBride on behalf of Raymond Panaggio, who is also
9 present.

10 MR. CONNOLLY: Good morning, your Honor.
11 Attorney Bill Connolly for Michael Bourque.

12 MR. McCORMICK: Good morning, your Honor,
13 Edward McCormick John Kinney, who waives his presence
14 today.

15 MR. SCULLY: Good morning, your Honor, Liam
16 Scully for Sean Cotter, who also waives his presence.

17 MR. SWOMLEY: Good morning, your Honor, John
18 Swomley for Robert Hagenars, who's present.

19 MR. DEMISSIE: Good morning, your Honor,
20 Derege Demissie for Phillip Goolst, and he waives his
21 presence today.

22 THE COURT: And, Mr. Demissie, the clerk
23 explains to me that you may have to leave, and
24 Ms. Feldman-Rumpler will cover for you, and that's
25 fine. If you have to leave, just get up and leave.

1 MR. DEMISSIE: Thank you, your Honor.

2 THE COURT: Okay.

3 Let me, um, simply to, I think, concentrate the
4 argument, because what I'm going to take up first is the
5 motion to suppress of Mark Newton in which various of
6 the defendants join. I don't see this as a motion to
7 suppress at all, rather it's a motion directed to the
8 admissibility of evidence. And reading the papers --
9 and I have read the papers, it appears to me -- but my
10 mind is open on anything that I may say now, but it
11 appears to me the statute's been violated and the
12 question is then what?

13 It doesn't appear that the statute has been
14 violated in some sort of invidious cover-up fashion,
15 rather it appears that the statute's been violated
16 through inadvertence, inattentiveness to the statute's
17 commands. So it is highly unlikely that the result
18 would be suppression of what may well be otherwise
19 extremely probative evidence. Instead the issue is a
20 quite appropriate challenge to the admissibility of that
21 evidence which places on the government the burden to
22 turn their corners very square with respect to proving
23 up that admissibility. They're going to have to take
24 the, um, wiretap, the evidence of the wiretap, however
25 it is collected, on disk or otherwise, and go from the

1 street, if you will, into the courtroom proving up every
2 step of the way.

3 Now, their proof, as far as the Court is
4 concerned, need only be by a fair preponderance of the
5 evidence because it's a preliminary finding of fact that
6 allows the Court to make a ruling on the admissibility
7 of evidence. So the question is when shall we do that?
8 And it may be that the defense wants some sort of
9 evidentiary hearing on that prior to the trial. I don't
10 propose to grant that. Rather, in light of this
11 challenge, the government's going to have to prove that
12 up at trial. In most trials, that's not an issue. In
13 this trial, it may be. And so the government will have
14 to prove it. I will make my preliminary finding and
15 ruling, um, once they've had their chance to do that.
16 Now, if that goes against the government, here's the
17 problem the government faces because of my approach and
18 their violation of the statute.

19 Let's say there is something -- I consider this
20 highly unlikely, but possible, something invidious about
21 this or let's say the government can't cover a step.
22 Well, if they can't cover a step, the result is clear,
23 the evidence is inadmissible because we can't say that
24 the data in court is reflective of what went on in the
25 field, but we'll only know that after jeopardy has

1 attached, because I'm not doing this twice. The, um --
2 and that's the downside risk to the government.

3 The defense may well say, "Well, Judge, we're
4 entitled to know whether you're going to admit this
5 evidence," and there's merit to that. Only, I will tell
6 you, I have read these materials and affidavits and the
7 like and they are the typical proffer that is made in
8 order to support the admissibility of evidence, and
9 while the defense has every right, a confrontation
10 clause right to challenge it at trial, if you press me
11 now I'm inclined to rule that -- to find on the
12 affidavits and rule that the evidence is admissible
13 subject of course to what comes out at trial when we're
14 actually looking at witnesses and everyone gets a chance
15 to cross-examine them.

16 Now, there's other things we need to discuss and
17 that is not a ruling, I'm eager indeed to hear argument,
18 but I thought it would be helpful to explain to you
19 what's in my mind when I come on the bench.

20 So, Mr. Apfel, I think you're the lead on this.
21 Have I -- well, what about that analysis?

22 MR. APFEL: Well, I think you're wrong, your
23 Honor.

24 THE COURT: Okay, I'll hear you.

25 MR. APFEL: Because for starters, the

1 government has a burden of proof to establish a -- that
2 it complied with the statute, which clearly it didn't.

3 THE COURT: Well, I'm not now making rulings,
4 but it looks like they didn't.

5 MR. APFEL: And then they have the burden to
6 establish -- to come forward with a satisfactory
7 explanation.

8 THE COURT: Correct.

9 MR. APFEL: Now, your Honor said that he read
10 the "affidavits and the like". If there were
11 affidavits, perhaps the analysis of your Honor would be
12 correct, but we don't have any affidavits here, we have
13 nothing except bald assertions by the government. We
14 don't have any evidence, we don't have the necessary
15 clear and convincing evidence that the integrity of the
16 tapes have been maintained.

17 You know, your Honor said that it doesn't seem as
18 if anything invidious here happened, there was anything
19 -- you know, there was any attempt to corrupt the tapes,
20 that the integrity of the tapes is probably intact.
21 That may well be the case, but we don't know, and that's
22 because the government has come forward with nothing.
23 It's come forward with papers in which Mr. Yoon says he
24 spoke to various and sundry agents, the very agents who,
25 I would suggest, would have the inclination, certainly

1 the ability to tamper with the tapes because they were
2 the ones who were in possession of the tapes and had
3 access to them. The government said, "Oh, trust me,
4 these are good agents, they're solid agents, and it was
5 only five days in one case, five days in another case,
6 seven days in another case, no big deal, take our word
7 for it." Well, that's not good enough. And the statute
8 --

9 THE COURT: Of course it's not good enough in
10 the sense that I'm not making any finding or ruling, I'm
11 simply explaining to you when I propose to make it.

12 MR. APFEL: But it's a question of the issue
13 of timing. There are two questions on timing. One,
14 before the government can even get to trial, it has to
15 at least make the preliminary necessary showing that
16 there's a satisfactory explanation.

17 THE COURT: Well, an officer of the court
18 files his brief, explains things, um, you think that
19 bars a trial? What is the authority that I've got to
20 embark on some evidentiary hearing here even if the
21 statute was violated?

22 MR. APFEL: Because the statute itself -- the
23 statute itself, the specific provision has embedded
24 within it an exclusionary remedy, it's own specific
25 exclusionary remedy specific to Section 2518(8)(a) and

1 **Mora** talks about that exclusionary remedy that is
2 embedded within that specific provision of that statute.

3 THE COURT: Well, respectfully, and I don't
4 express any, um, disagreement with **Mora**, but I'm not
5 bound by **Mora**, am I?

6 MR. APFEL: Oh, you are bound by **Mora**. Last
7 time I checked, **Mora** is the controlling authority within
8 the First Circuit.

9 THE COURT: I stand corrected. You're right.

10 MR. APFEL: **Mora** is consistent with the
11 Supreme Court's decision three years later in **Ojeda**
12 **Rios**, which really tracks **Mora** almost word for word. So
13 I think you are bound by **Mora** and you're bound by the
14 statute and the statute requires, I think, that this be
15 addressed in the context of a motion to suppress and not
16 wait till jeopardy attaches.

17 THE COURT: Where's the authority for that?

18 MR. APFEL: Um, I have to check. I have to
19 check. But I think that -- I think that typically --
20 typically these issues with respect to exclusion of
21 evidence where there is an exclusionary rule,
22 particularly where there's a statutory exclusionary
23 rule, are handled by way of a motion to suppress.

24 THE COURT: Let's hear from Mr. Yoon.

25 Mr. Yoon, what do you think of the Court's

1 analysis?

2 MR. YOON: Yes, sir. The government actually
3 agrees with the Court's analysis and speaking to the
4 risk of the jeopardy attaching, um, frankly the
5 government's willing to take that risk should we proceed
6 in this case.

7 THE COURT: Well, it's not bargaining, um,
8 you're willing to take it, I'm telling you you're going
9 to have to take it.

10 MR. YOON: Yes, absolutely, your Honor, and
11 that's something that we're comfortable with and we
12 don't think that's a disadvantage to the government
13 given the way the investigation has gone.

14 THE COURT: Do you think you've satisfied the
15 controlling cases, as I am reminded, and the statutory
16 language by your brief?

17 MR. YOON: Your Honor, there was a violation
18 here, absolutely. Should the tapes have been sealed
19 before five days -- five days and seven days?
20 Absolutely. They should have been. This is an
21 infraction of Title III, but not one that is substantive
22 -- it is one that is technical in nature, your Honor,
23 and one that does not trigger the suppression. That is
24 the government's position.

25 THE COURT: Well, it doesn't trigger the

1 suppression only because, um, I would be -- we're
2 talking hypothetically here because I haven't ruled,
3 satisfied with the explanation in your brief, right?

4 MR. YOON: Yes, sir.

5 THE COURT: Otherwise Mr. Apfel's correct,
6 these tapes go nowhere because there has been a
7 statutory violation.

8 MR. YOON: Yes, and but, as the Court has
9 expressed and I think Mr. Apfel would agree, that there
10 was no allegation of bad faith here and no invidious --

11 THE COURT: Well, he doesn't know, he may want
12 to take a shot at at least putting some doubt in the
13 jury's mind at the time of trial or in my mind in which
14 case, um, if it's sufficient, I will exclude them.

15 MR. YOON: And that would be -- yes, that
16 would be the appropriate setting, where not necessarily
17 here, but at a trial or --

18 THE COURT: What do you say to his last
19 argument that I must address this pretrial by way of a
20 motion to suppress?

21 MR. YOON: Your Honor, I don't believe that
22 there is any authority for that. I believe that this is
23 an authenticity issue, um, that can be addressed during
24 the trial, the purported admissibility of the tapes.
25 The government can and will prove, will endeavor to

1 prove to the Court's satisfaction, before permitting to
2 the jury, that in fact these tapes are exactly what they
3 say, additional evidence -- um, additional methods by
4 which we could do that -- also existing cooperators
5 here. So, your Honor, we don't believe it's appropriate
6 to address this in this setting, um, and we believe that
7 it is more appropriate to have it in a setting where the
8 trial has progressed.

9 THE COURT: Well, here's what I'm going to
10 do. I'm going to deny the motion to suppress without
11 prejudice to the following, without prejudice to further
12 briefing on the issue of whether I must address this
13 pretrial and without prejudice to, um, the burden on the
14 government at trial to prove up the authenticity of the
15 tapes. The defense need this motion, which I'm denying
16 without prejudice, is sufficient to put the government
17 on notice that there is a challenge to the authenticity
18 of the tapes, especially as the government admits a
19 statutory violation. And so the government will have
20 the burden at trial to prove up the authenticity of the
21 tapes.

22 Now, before we get to a final pretrial conference
23 here --

24 MR. APFEL: Your Honor, may I interrupt for a
25 second?

1 THE COURT: Yes, you may.

2 MR. APFEL: Before the ruling becomes set in
3 stone.

4 **Mora**, my recollection, and I think this is
5 correct, um, the procedural posture of **Mora**, were that
6 the defendants pled guilty after a motion to suppress on
7 precisely the grounds that had been advanced to the
8 Court would raise and I think in that case rejected by
9 Judge Garrity at the time.

10 THE COURT: I think that's right.

11 MR. APFEL: And I think that's right. And
12 then they preserved -- they entered conditional pleas,
13 conditioned on their right to appeal the issue of
14 whether or not the statute had been violated.

15 So I don't know whether it is -- I can't say for
16 certain, as I'm standing here, that it is a requirement
17 that this issue be addressed pretrial in the context of
18 the motion to suppress -- in the context of the motion
19 to suppress. I believe, however, that that's what the
20 statute calls for and that's what the practice is. I
21 believe in almost every case --

22 THE COURT: No, but that's your point. I
23 didn't mean to, um, sidestep your point, but my own
24 preparation leads me to believe that the way I propose
25 to ultimately address this is appropriate. So I'm

1 denying the motion to suppress, and I had two prongs,
2 without prejudice.

3 One, I don't think you have a better argument than
4 the one you've just articulated, but if you do and if I
5 were to become persuaded I had to hold some evidentiary
6 thing or at least, as you've reminded me, go further
7 than Mr. Yoon's brief, then, if I become persuaded I
8 must do that, I will do it. But as I sit here I am not
9 persuaded, but I'm going to give you the chance, because
10 that hasn't been briefed, the timing issue hasn't been
11 briefed.

12 And the second point is -- and it's without
13 prejudice really to save all the defendants' rights,
14 I've told the government there's an admitted statutory
15 violation, they've got to turn their corners very square
16 as to authenticity at trial, I'll be looking at
17 witnesses, they'll be cross-examination, at that time I
18 will make my preliminary evidentiary findings, rulings,
19 and everyone's rights will be saved if things were to go
20 the government's way.

21 MR. APFEL: But, your Honor, one last point.
22 The issue here is not simply authenticity, the issue
23 here is not simply the integrity of the tapes, **Mora**
24 makes this clear, **Ojeda Rios** makes it clear. Even if
25 the government establishes beyond a shadow of a doubt

1 that the tapes, the integrity of the tapes have been
2 maintained, they still must come forward with a
3 satisfactory explanation for the delay. And if you put
4 it off till trial, I haven't thought through the
5 logistics, but it seems all but inevitable that we'd be
6 in a burden-shifting area --

7 THE COURT: There's no burden shifting.

8 MR. APFEL: -- where the government has to
9 prove not just that the integrity has been maintained,
10 they have to go through all the other so-called "**Mora**
11 factors" and establish good faith. Mr. Yoon said I
12 haven't alleged bad faith. It's not my burden to allege
13 bad faith.

14 THE COURT: I understand that.

15 MR. APFEL: The government has to establish
16 good faith. You know, he has to establish that the
17 delay was not so long that tampering could have taken
18 place. And most importantly, for our purposes, he has
19 to establish good reason and a satisfactory explanation,
20 not mere excuses, for the cause for the delay. If we go
21 forward to trial --

22 THE COURT: Well, I'm telling you that based
23 upon his brief -- now maybe there's more to it than
24 that, but based upon his brief, as he is an officer of
25 the court, I think that he has provided satisfactory

1 explanations. I'm content with that. I'm giving you
2 every right to challenge it at trial and indeed to brief
3 further why that challenge must be entertained prior to
4 trial.

5 MR. APFEL: Can we go through -- can we go
6 through even one of his so-called "satisfactory
7 explanations" because for every one of the explanations
8 there is specific case authority saying that it's not
9 good enough, it's not an explanation, it's an excuse.

10 You know, his lead argument is that the
11 appointment could not -- quote, on Page 8 of his brief,
12 "could not be scheduled for the same day." He never
13 tried. Even with the very partial showing that he's
14 made, if you take the e-mails at face value and you read
15 the e-mails, every one of these e-mails, um -- for the
16 first one, the very first one, the Target Telephone
17 Number 3 terminated on March 15th at 11:59. Mr. Yoon
18 contacts the District Court clerk by e-mail on that same
19 day, which is a Friday, and does he say, "Is the Court
20 available? Can we do it now? Is the Court going to be
21 available tomorrow after this is done? There's an
22 immediacy requirement here. There's an urgency
23 requirement." No. He says, "Could you let me know when
24 we can schedule next week, can we schedule a time next
25 week?" And that's what he does in each case.

1 Target Telephones 4 and 5, he contacts the clerk
2 not the day that it goes down, but the next day and he
3 says, "Can we set up a time next week?" He's contacting
4 the Court in that case on a Friday morning and he says,
5 "Can we do something next week?" Why not "Can we do
6 something now? Can we do something this morning? Can
7 we do something this afternoon? Can we do something
8 over the weekend?" Nothing like that. Weekends count
9 in the statute. "Immediately" means "immediately." And
10 **Mora**, the District Court's opinion in **Mora**, makes it
11 clear that weekends do count and have counted for over
12 25 years in this circuit. It's not a satisfactory
13 explanation.

14 You know, Mr. Yoon says with respect to the last
15 of the, um -- the reupping of Target Telephones 4 and 5,
16 when those are terminated, he says, "Oh, we're very
17 busy." There was a takedown of 15 different
18 defendants. There were initial appearances. There were
19 a lot of logistics. The government -- that's
20 foreseeable, that's not out of the ordinary, that is the
21 very stuff of a busy AUSA's workload. That's
22 anticipated, it's not a reason for delay. You can find
23 somebody else to cover. You can get a different
24 District Court judge. The clerk not responding to
25 e-mails is not a satisfactory explanation.

1 He's presenting all sorts of reasons as to why it
2 was inconvenient for him to go to the Court and get
3 these sealed, but he's not giving explanations that
4 count as truly satisfactory explanations within the
5 meaning of the case law. And that's his burden, and
6 it's not his burden at trial, it's his burden now, and
7 he hasn't met it.

8 THE COURT: Thank you. My ruling stands.

9 All right.

10 MR. PARKER: Your Honor, just so the record's
11 clear, I want to make sure -- I haven't thought about
12 this issue of suppression versus authenticity, but I
13 want to object to that having this resolved prior to
14 trial.

15 THE COURT: Oh, by joining in the motion, all
16 of who have joined in the motion, have joined, I take
17 it, in Mr. Apfel's arguments, which I have allowed for
18 further briefing on. But that's my ruling.

19 MR. PARKER: So if I could just address one
20 practical issue, Judge, with respect to that ruling?
21 You know, if there's a doubt at all as to whether this
22 evidence is going to come in and we're at trial, one or
23 more of us is at trial, um, you know, I would move and I
24 would suspect that I have grounds to exclude mentioning
25 of these tapes in an opening by the government. And I

1 think if we --

2 THE COURT: We'll face that at the time of the
3 trial.

4 MR. PARKER: I think if we have the kind of
5 hearing we're all talking about having, that's not
6 something that's going to take place in the presence of
7 the jury, and so I guess for practical reasons, without
8 any legal authority behind them, I'm wondering why we
9 don't take care of it with all of us here today.

10 THE COURT: I guess what I don't understand is
11 we have taken care of it, I've denied the motion to
12 suppress on this record. Your rights are saved.

13 All right. Now, with respect to Mr. Assencoa, who
14 represents Mr. Assencoa?

15 MR. PARKER: That's Assencoa, your Honor, and
16 it's James Budreau.

17 THE COURT: And he's not present. Well, he's
18 got a motion to suppress that's going to take an
19 evidentiary hearing.

20 MR. YOON: Yes, Mr. Assencoa and Mr. Ouellette
21 both have motions that they've filed.

22 THE COURT: And neither counsel is present
23 joining in this?

24 MR. YOON: I don't see them, your Honor.

25 THE COURT: All right. Well, the clerk is

1 going to suggest a date. You inform them of the date.
2 We'll see if we can't -- and you be ready to prove it
3 up. Let me talk to the clerk a minute.

4 (Pause.)

5 THE COURT: How about Wednesday at 9:00 for
6 the government?

7 MR. YOON: Your Honor, the 19th? I am
8 scheduled to be out of town.

9 THE COURT: How about Friday the 21st?

10 MR. YOON: The 21st? Thank you, your Honor.
11 That would be great.

12 THE COURT: At 9:00. You notify them that if
13 they have a problem with that date, they can be in touch
14 with the Court. That's when we will handle that.

15 Now, let's move to the final pretrial conference
16 and, um -- so the short of it is, um, I guess in light
17 of what various defense counsel have advanced, I'm going
18 to have to continue the trial. I propose to continue
19 the trial until the earliest available date in April.
20 The clerk will announce the date.

21 (Pause.)

22 THE COURT: I propose to put the case to trial
23 on the 7th of April. Let me go through the concerns
24 that have been articulated that are in the Court's mind
25 -- well, we'll start with the government.

1 The government's all right with the 7th of April?

2 MR. YOON: Yes, your Honor. Thank you.

3 THE COURT: And someone had a murder trial.
4 Counsel?

5 MR. SWOMLEY: I have a murder trial for the
6 3rd, but I also have a murder trial for April 14th, so
7 --

8 THE COURT: I appreciate how busy you are,
9 we're going to start on the 7th, I'll deal with the
10 state judges, um, if we start.

11 Mr. Apfel had a personal matter, but the 7th's
12 okay for you?

13 MR. APFEL: The 7th should work. My only
14 concern is I have a trial scheduled with Judge Stearns
15 for the 14th.

16 THE COURT: But if I get you first, I'll work
17 with Judge Stearns.

18 Mr. Parker, I was not insensitive to what you said
19 at the last time we met, but it seems to me that the 7th
20 ought to alleviate those concerns.

21 MR. PARKER: I can deal with that, your
22 Honor. I do have a motion before you for funds, there
23 were two, I got one ruled upon and one not, and the
24 other one is kind of critical.

25 THE COURT: Yes, without -- I mean I properly

1 treat these things ex parte and I think I can. The only
2 reason I held that up, Mr. Parker, is -- there's no
3 question about the request, but about the extent, and
4 we're constantly -- we judges are constantly being
5 hectored with limits now on what we can authorize and I
6 have been inquiring within the executives, within the
7 judiciary clerks and others, whether you didn't ask for
8 too much.

9 So I'm certainly going to authorize it, but it may
10 be -- and I will thank you for raising it, I will
11 address it again. I remember seeing it and saying, "Is
12 this over the amount?" and then the clerk's office steps
13 have been criticized earlier today, we have looked into
14 it and do not have an answer, for which I bear the
15 responsibility. I'll address it again today.

16 MR. PARKER: Thank you.

17 THE COURT: All right. I'm putting it on for
18 the 7th.

19 MR. APFEL: And I have an outstanding motion
20 as well, your Honor.

21 THE COURT: If you do, I will check the
22 docket, and I thank you. And if anyone else does, I'll
23 go back over the whole docket.

24 All right. If we're going on the 7th, then, um --
25 the 7th of April, then by the 17th of March the

1 government is to make a full disclosure of all the
2 materials required by the -- no, one week prior, by the
3 24th of March, the government is to make full disclosure
4 of all the statements and materials that it is required
5 to disclose under the local rules. The -- by the 31st
6 of March, the government is to set forth the materials
7 required to be set forth one week prior to the trial.
8 By the 2nd of April, the defense is required to make a
9 reciprocal discovery. But the 4th of April, the, um --
10 motions in limine, stipulations and the like, are to be
11 filed. The case will empanel on the 7th of April.

12 Are there any other matters we should deal with
13 this morning?

14 (Silence.)

15 THE COURT: I hear none.

16 MR. YOON: None from the government, your
17 Honor.

18 (Pause.)

19 THE COURT: All right. I hear no other
20 questions.

21 MR. APFEL: Your Honor, one issue, just on the
22 further briefing, on the timing question?

23 THE COURT: Uh-huh.

24 MR. APFEL: I don't think you set a schedule
25 for that.

1 THE COURT: I didn't so now it's -- here we
2 are in February and now it's off till, um -- this is the
3 14th.

4 How long would you like?

5 MR. APFEL: I think it's a discrete issue, so
6 a week is fine.

7 THE COURT: All right, by Friday the 21st.
8 And I invite consideration beyond legal authorities,
9 such as Mr. Parker raised, and we'll see what the
10 government responds.

11 And the government's response a week later by the
12 28th.

13 MR. YOON: Thank you, your Honor.

14 THE COURT: And if I need any further
15 hearings, I will schedule it.

16 MR. YOON: Thank you, your Honor.

17 MR. PARKER: Your Honor, one question?

18 THE COURT: Yes.

19 MR. PARKER: It's been a while since I geared
20 up for trial in this building. I think that, um --

21 Did you set the 24th as a 21-day disclosure
22 requirement, because that would be the 17th? I think
23 you were right the first time, if you had in mind the
24 21st day --

25 THE COURT: Thank you, Mr. Parker. I should

1 make it the 17th. The 21-day disclosure works back to
2 the 17th. The government will understand that. All
3 right? And then the government is to make further
4 disclosure one week before and the defense is to make
5 reciprocal disclosure by the Wednesday of the week
6 before.

7 All right. Thank you all. We'll recess.

8 (Ends, 10:45 a.m.)

9

10 C E R T I F I C A T E

11

12 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
13 do hereby certify that the foregoing record is a true
14 and accurate transcription of my stenographic notes,
15 before Judge William G. Young, on Friday, February 14,
16 2014, to the best of my skill and ability.

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19 /s/ Richard H. Romanow 03-19-14

20 _____
RICHARD H. ROMANOW Date

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